

§ 36.4287

- (4) Advice to Secretary as to default,
- (5) Notice of intention to begin action,
- (6) Notice to the Secretary in any suit or action, or notice of sale,
- (7) The release, conveyance, substitution, or exchange of security,
- (8) Lack of legal capacity of a party to the transaction incident to which the guaranty is granted,
- (9) Failure of the lender to see that any escrowed or earmarked account is expended in accordance with the agreement,
- (10) The taking into consideration of limitations upon the quantum or quality of the estate or property,
- (11) Any other requirement of 38 U.S.C. 3712 or the §36.4200 series which does not by the terms of said section or regulations result in relieving the Secretary of all liability with respect to the loan,

no claim on the guaranty shall be paid on account of the loan with respect to which such failure occurred, or in respect to which an unwillful misrepresentation occurred, until the amount by which the ultimate liability of the Secretary would thereby be increased has been ascertained. The burden of proof shall be upon the holder to establish that no increase of ultimate liability is attributable to such failure or misrepresentation. The amount of increased liability of the Secretary shall be offset by deduction from the amount of the guaranty otherwise payable, or if consequent upon loss of security shall be offset by crediting to the indebtedness the amount of the impairment as proceeds of the sale of security in the final accounting to the Secretary. To the extent the loss resultant from the failure of misrepresentation prejudices the Secretary's right of subrogation acceptance by the holder of the guaranty payment shall subordinate the holder's right to those of the Secretary.

(c) If after the payment of a guaranty, or after a loan is transferred pursuant to §36.4281, the fraud, misrepresentation, or failure to comply with the regulations concerning guaranty of loans to veterans as provided in this section is discovered and the Secretary determines that an increased loss to the Government resulted therefrom,

38 CFR Ch. I (7–1–10 Edition)

the transferee or person to whom such payment was made shall be liable to the Secretary for the amount of the loss caused by such misrepresentation or failure.

§ 36.4287 Substitution of trustees.

In jurisdictions in which valid, any deed of trust or mortgage securing a guaranteed loan, if it names trustees or confers a power of sale otherwise, shall contain a provision empowering any holder of the indebtedness to appoint substitute trustees or other person with such power to sell, who shall succeed to all the rights, powers, and duties of the trustees, or other person, originally designated.

Subpart B—Guaranty or Insurance of Loans to Veterans With Electronic Reporting

SOURCE: 73 FR 6310, Feb. 1, 2008, unless otherwise noted. Redesignated at 75 FR 33705, June 15, 2010.

§ 36.4300 Applicability of this subpart.

(a) This subpart applies to loans serviced by a mortgage servicing industry segment on or after the date that VA issues a FEDERAL REGISTER notice making this subpart applicable to that segment. This includes loans entitled to an automatic guaranty, or otherwise guaranteed or insured, on or after the date assigned in the FEDERAL REGISTER, and loans that were previously guaranteed or insured to the extent that no legal rights vested under the regulations are impaired.

(b) Title 38 U.S.C., chapter 37, is a continuation and restatement of the provisions of Title III of the Servicemen's Readjustment Act of 1944, and may be considered an amendment to such Title III. References to the sections or chapters of title 38 U.S.C., shall, where applicable, be deemed to refer to the prior corresponding provisions of the law.

(Authority: 38 U.S.C. 3703(c)(1))

§ 36.4301 Definitions.

Whenever used in 38 U.S.C. chapter 37 or subpart F of this part, unless the context otherwise requires, the terms